

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:08CR9-V

FILED  
CHARLOTTE, N. C.

JUN 9 2008  
U. S. DISTRICT COURT  
W. DIST. OF N. C.

UNITED STATES OF AMERICA,

v.

ELLIS LEMACH THOMAS,

Defendant.

ORDER

**THIS MATTER** is before the Court regarding purported defense counsel's failure to file a notice of appearance or to secure the services of local counsel. Purported counsel (Mitchell H. Nelson) will be given two weeks to file a notice of appearance and to secure the services of local counsel, or he will not be permitted to appear in this case and he will be ordered to return any fee he has received to represent the Defendant.

The Defendant was initially represented by J. Steven Brackett, one of the most experienced and capable federal criminal practitioners in this district. Mr. Brackett moved to withdraw by motion filed April 18, 2008 (document #11). By letter faxed to the undersigned on April 22, 2008 Mr. Brackett advised the Court that the Defendant's wife had informed him that the Defendant had retained substitute counsel. On the basis of the factual averments in Mr. Brackett's motion and letter the undersigned orally granted Mr. Brackett's Motion to Withdraw on April 23, 2008.

Although substitute counsel – according to the Defendant, Mitchell H. Nelson of Novi, Michigan – has been retained since on or about April 22, 2008 and has received multiple calls from the Court and from the Assistant U.S. Attorney handling this case (Adam Christopher Morris), to date he has neither filed notice of appearance nor selected local counsel to assist him. At a second

Inquiry To Counsel hearing conducted by the undersigned on this date the Defendant was found qualified for court-appointed counsel and the Community Defender's Office was appointed.

As the Defendant was advised at today's hearing, Mr. Nelson will be given a limited period of additional time to file notice of appearance and to select local counsel to assist him. Should he do both within the time to be allowed (two weeks), appointed counsel will be excused of further responsibility in this case. Should Mr. Nelson not comply with the Court's requirements he, however, will not be allowed to represent the Defendant.

**NOW THEREFORE, IT IS ORDERED:**

1. Mitchell H. Nelson shall file notice of appearance and select local counsel to assist in the above captioned case on or before Monday, June 23, 2008, and if he fails to do so, he is **PRECLUDED** from appearing for the Defendant thereafter.

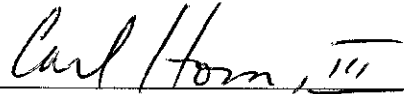
2. If Mr. Nelson fails to appear in behalf of the Defendant as set forth above – having allegedly been retained at that point for two months but never having appeared in the case or even met his client – he shall promptly **REFUND** any and all fees he has received to represent the Defendant.

3. Should refund of fees be required, Mr. Nelson shall promptly notify the Court that he has done so. Mr. Nelson is advised that failure to fully comply with the terms of this Order and any other unprofessional conduct will be reported to the Michigan State Bar.

4. The Clerk is directed to send copies of this Order to AUSA Adam Christopher Morris;  
the Honorable Richard L. Voorhees; and to Mr. Nelson at the following address:

Mr. Mitchell H. Nelson  
Imhoff & Associates, PC  
28175 Hagerty Road  
Novi, Michigan 48377

**SO ORDERED**, this 9th day of June, 2008.

  
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Carl Horn, III  
United States Magistrate Judge